

## LEGISLATIVE BILL 389

Approved by the Governor May 31, 2001

Introduced by Bromm, 23

AN ACT relating to telecommunications; to amend sections 86-808, 86-1403, 86-1905, 86-1907, and 86-1908, Reissue Revised Statutes of Nebraska, sections 86-1405 and 86-1909, Revised Statutes Supplement, 2000, and section 86-804, Reissue Revised Statutes of Nebraska, as amended by section 15, Legislative Bill 585, Ninety-seventh Legislature, First Session, 2001; to change and provide powers and duties of the Public Service Commission; to change provisions of the Telephone Consumer Slamming Prevention Act; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 86-804, Reissue Revised Statutes of Nebraska, as amended by section 15, Legislative Bill 585, Ninety-seventh Legislature, First Session, 2001, is amended to read:

86-804. The commission shall ~~provide the Legislature with file with the Clerk of the Legislature~~ an annual report on or before September 30 of each year on the status of the Nebraska telecommunications industry. ~~The report may be submitted in electronic format.~~ The report shall ~~describe~~ address: (1) The quality of telecommunications services being provided to the citizens of Nebraska; (2) the availability of diverse and affordable telecommunications services to all of the people of Nebraska; (3) the level of ~~rates of local exchange companies and interexchange telecommunications companies telecommunications service rates;~~ (4) ~~the level of the Nebraska Telecommunications Universal Service Fund; as determined by section 86-1409;~~ (5) the availability and location of 911 service and E-911 service as required by section 86-1005; and (6) the availability and location of wireless 911 service or enhanced wireless 911 service as required by section 5 of this act. The report also shall address the question of the need for further legislation to achieve the purposes of sections 86-801 to 86-811.

Sec. 2. Section 86-808, Reissue Revised Statutes of Nebraska, is amended to read:

86-808. ~~(1) Except as provided in subsection (2) of this section, the~~ The commission shall not regulate the following:

~~(a)~~ (1) One-way broadcast or cable television transmission of television or radio signals; and

~~(b)~~ (2) Mobile radio services, radio paging services, and wireless telecommunications service.

~~(2) The commission, consistent with the federal act, shall require every provider of telecommunications services to contribute to any universal service mechanism established by the commission pursuant to state law.~~

Sec. 3. Section 86-1403, Reissue Revised Statutes of Nebraska, is amended to read:

86-1403. For purposes of the Nebraska Telecommunications Universal Service Fund Act:

(1) Commission means the Public Service Commission;

(2) Fund means the Nebraska Telecommunications Universal Service Fund;

(3) Telecommunications Act of 1996 means the federal telecommunications legislation enacted as Public Law 104-104, as such law existed on the effective date of this act; and

(4) Telecommunications company means any natural person, firm, partnership, limited liability company, corporation, or association offering telecommunications services ~~to the public~~ for hire in Nebraska intrastate commerce without regard to whether such company holds a certificate or permit from the commission.

Sec. 4. Section 86-1405, Revised Statutes Supplement, 2000, is amended to read:

86-1405. (1) The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act. Only eligible telecommunications companies designated by the commission shall be eligible to receive support to serve high-cost areas from the fund. A telecommunications company that receives such support shall use that support only for the

provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purpose of the ~~Nebraska Telecommunications Universal Service Fund Act. The act.~~

(2) Notwithstanding the provisions of section 86-808, the commission (a) shall have authority and power to issue orders carrying out its responsibilities and to review the compliance of any eligible telecommunications company receiving support for continued compliance with any such orders and may withhold all or a portion of the funds to be distributed from any telecommunications company failing to continue compliance with its orders, (b) shall, consistent with the Telecommunications Act of 1996, require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law, and (c) may administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act.

(3) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

~~(2) The commission may administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act.~~

Sec. 5. Section 86-1905, Reissue Revised Statutes of Nebraska, is amended to read:

86-1905. ~~Except when a subscriber initiates or changes service by contacting the telecommunications company directly~~ (1) Except as provided in subsection (2) of this section, no telecommunications company shall submit or execute on behalf of a subscriber a change in a the subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service without:

- ~~(1)~~ (a) Written change authorization from the subscriber;
- ~~(2)~~ (b) Toll-free electronic authorization placed from the telephone number which is the subject of the change order; or
- ~~(3)~~ (c) Oral authorization obtained by an independent third party.

A separate and distinct authorization shall be required to submit ~~or execute~~ a change of service for any or all of the following services provided to subscribers in this state: Basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, or any other telecommunications services.

(2) The requirements of this section shall not apply to a change in a subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service that results from any merger or sale of exchanges or transfer of authority approved by the commission.

Sec. 6. Section 86-1907, Reissue Revised Statutes of Nebraska, is amended to read:

86-1907. (1) Nothing in the Telephone Consumer Slamming Prevention Act shall preclude a subscriber from electing to resolve an unauthorized change in service directly with the unauthorized telecommunications company. If the subscriber is unsatisfied with the resolution from the unauthorized company, the subscriber may file a complaint with the commission. The complaint may be made by letter, fax, online notification, or telephone call to the commission. The subscriber may be required to provide a copy of the subscriber's telephone bill that contains the alleged unauthorized company's charges.

(2) The commission, consistent with applicable federal rules and regulations including rules and regulations of the Federal Communications Commission which implement section 258 of the federal act, shall adopt and promulgate rules and regulations for resolution of subscriber complaints of an unauthorized change in service. The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred in violation of section 86-1905 and the subscriber has paid charges to an allegedly unauthorized telecommunications company. Upon receiving notification from the subscriber or a company that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized company, the properly authorized company shall, within thirty days, request from the allegedly unauthorized company proof of verification of the subscriber's authorization to change companies. Within ten days after receiving such request, the allegedly unauthorized company shall forward to the authorized company either:

- ~~(a) Proof of verification of the subscriber's authorization to change companies; or~~
- ~~(b) The following:~~

(i) An amount equal to all charges paid by the subscriber to the unauthorized company;

(ii) An amount equal to any charge required to return the subscriber to his or her properly authorized company, if applicable; and

(iii) Copies of any telephone bills issued from the unauthorized company to the subscriber.

(2) If an authorized telecommunications company incurs any billing and collection expenses in collecting charges from the unauthorized company, the unauthorized company shall reimburse the authorized company for reasonable expenses.

(3) When a subscriber notifies the unauthorized company, rather than the authorized company, of an unauthorized change, the unauthorized company shall immediately notify the authorized company.

(4) Upon receipt from the unauthorized company of the amount described in subdivision (1)(b)(i) of this section, the authorized company shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized company would have charged the subscriber absent the unauthorized change. If the authorized company has not received from the unauthorized company an amount equal to charges paid by the subscriber to the unauthorized company, the authorized company is not required to provide any refund or credit. The authorized company shall, within sixty days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized company and inform the subscriber of his or her right to pursue a claim against the unauthorized company for a refund of all charges paid to the unauthorized company.

(5) When possible, the properly authorized company shall reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized company, the properly authorized company shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized company shall comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized company any charges that were paid by the subscriber.

(6) The Public Service Commission may from time to time review and adjust the reimbursement procedures in a manner consistent with federal law.

Sec. 7. Section 86-1908, Reissue Revised Statutes of Nebraska, is amended to read:

86-1908. If the Public Service Commission commission finds that a telecommunications company has violated section ~~86-1907~~ 86-1905, the commission shall order the company to take corrective action as necessary and the company may be subject to administrative penalties pursuant to section ~~86-1909~~. Any money collected by the commission pursuant to this section shall be remitted to the State Treasurer for credit to the permanent school fund consistent with rules and regulations adopted and promulgated by the commission and the Federal Communications Commission.

Sec. 8. Section 86-1909, Revised Statutes Supplement, 2000, is amended to read:

86-1909. (1) The Public Service Commission commission may, after hearing, impose an administrative penalty for a violation of the Telephone Consumer Slamming Prevention Act. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific access line within the state shall be considered a separate and distinct violation.

(2) The amount of an administrative penalty shall be based on:

(a) The nature, circumstances, extent, and gravity of a prohibited act;

(b) The history of previous violations;

(c) The amount necessary to deter future violations; and

(d) Any efforts to correct the violation.

(3) Any money collected by the commission pursuant to this section shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) Any administrative penalty may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 9. Original sections 86-808, 86-1403, 86-1905, 86-1907, and 86-1908, Reissue Revised Statutes of Nebraska, sections 86-1405 and 86-1909, Revised Statutes Supplement, 2000, and section 86-804, Reissue Revised Statutes of Nebraska, as amended by section 15, Legislative Bill 585, Ninety-seventh Legislature, First Session, 2001, are repealed.